

IN THE SUPREME COURT OF THE STATE OF DELAWARE

FRANK C. WHITTINGTON, II,	§
	§ No. 246, 2011
Plaintiff Below-	§
Appellant,	§
	§ Court Below-Court of Chancery
v.	§ of the State of Delaware
	§ C.A. No. 2291
DRAGON GROUP, LLC, et al.,	§
	§
Defendants Below-	§
Appellees.	§

Submitted: June 8, 2011

Decided: June 13, 2011

Before **HOLLAND, BERGER** and **JACOBS**, Justices

ORDER

This 13th day of June 2011, it appears to the Court that:

(1) On May 13, 2011, the appellant filed a notice of appeal in this Court from the Court of Chancery's orders dated April 15, 2011 and May 11, 2011, which determined that the appellant is a member of Dragon Group LLC and is entitled to an accounting to determine his proportionate share of the entity's distributions or contributions. On May 16, 2011, the Clerk of the Court issued a notice pursuant to Supreme Court Rule 29(b) directing the appellant to show cause why the appeal should not be dismissed for his failure to comply with Rule 42 when taking an appeal from an apparent interlocutory order.

(2) On May 26, 2011, the appellant filed his response to the notice to show cause. In the response, he states that the notice of appeal was filed out of an abundance of caution in order to preserve his rights. He does not state why he did not comply with the requirements of Rule 42. In their joint reply, the appellees argue that the appeal should be dismissed since there is no doubt that the orders of the Court of Chancery are interlocutory.¹

(3) The test for whether an order is final and, therefore, ripe for appeal is whether the trial court has clearly declared its intention that the order be the court's "final act" in a case.² If the order of the trial court has not determined the substantial merits of the controversy or if there is no finality of the essential issues involved, then the matter is interlocutory and not ripe for appeal.³

(4) The record before us reflects that, in its May 11, 2011 decision, the Court of Chancery stated that "a final judgment will be entered promptly" after an accounting of the amount due the plaintiff, which is anticipated will be completed no more than sixty days following the appointment of an expert. Because the Court of Chancery explicitly states that its order does not constitute its "final act" in this matter, this appeal

¹ The appellees also request reimbursement of their attorney's fees in connection with the appeal on the ground that it is clearly "baseless."

² *J.L. Kislak Mortgage Corp. of Del. V. William Matthews, Builder, Inc.*, 303 A.2d 648, 650 (Del. 1973).

³ *Showell Poultry, Inc. v. Delmarva Poultry Corp.*, 146 A.2d 794, 796 (Del. 1958).

clearly is interlocutory and, in the absence of compliance with Rule 42, must be dismissed.

NOW, THEREFORE, IT IS ORDERED, pursuant to Supreme Court Rules 29(b) and 42, that this appeal is DISMISSED.⁴

BY THE COURT:

/s/ Carolyn Berger
Justice

⁴ The appellees' request for reimbursement of attorney's fees is denied.